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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

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11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 vs.)

14 THERESA MARCIANTI,)

15 Defendant.)
16 _____)

CASE NO.: 2:11-cr-452-PMP-CWH

GOVERNMENT'S PROPOSED ORDER TO
CONTINUE

17 The United States of America, by and through Daniel G. Bogden, United States Attorney,
18 Brian Pugh and Sarah E. Griswold, Assistant United States Attorneys, files this Proposed Order to
19 Continue and as grounds therefor state as follows:

20 On February 20, 2013, this Court held a hearing on defendant Marcianti's motion to
21 continue, or in the alternative, motion for severance and continuance of calendar call and trial
22 (Doc. 50). In support of the motion, defense counsel submitted a January 31, 2013, letter from the
23 doctor for defendant Marcianti's mother stating the defendant's mother has breast cancer and can
24 expect four to six months to live. (Doc. 50 Ex. A.) At the hearing defense counsel argued that
25 based on her mother's medical condition, Marcianti was not able to assist in her defense. Defense
26 counsel represented that Marcianti was working from her mother's bedside, that Marcianti's

1 mother has cancer, and that her mother is awaiting death. The court found that the defendant's
2 mother's situation could be distracting. In light of the facts presented, the court found that the
3 interest of justice would be served by allowing Marcianti to be with her mother in the coming
4 months. The government objected to a continuance and objected to severance from the trial date
5 with David Mark. The court granted the motion to sever and continued defendant Marcianti's trial
6 from March 11, 2013, to July 9, 2013.

7 On February 20, 2013, this Court entered a minute order memorializing its decision.
8 (Doc. 63.) The minute order did not address the Speedy Trial Act. Defense counsel submitted a
9 proposed order (Doc. 69), which the court signed on March 1, 2013 (Doc. 72). That order did not
10 set forth any facts to toll the Speedy Trial Act. Wherefore, the government submits the attached
11 proposed order to continue.

12 DATED this 7th day of March, 2013.

13 Respectfully submitted,

14 DANIEL G. BOGDEN
15 United States Attorney

16 /s/ Sarah E. Griswold
17 BRIAN PUGH
18 SARAH E. GRISWOLD
19 Assistant United States Attorneys
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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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10 UNITED STATES OF AMERICA,)

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15 _____)

CASE NO.: 2:11-cr-452-PMP-CWH

ORDER TO CONTINUE

16 **FINDINGS OF FACT**

17 Based on the pleadings and arguments of counsel, and good cause appearing therefore,
18 the Court finds that:

19 1. Defendant Marcianti's mother has breast cancer. The doctor for defendant
20 Marcianti's mother has stated that the defendant's mother can expect four to six months to live
21 from January 31, 2013.

22 2. Defendant Marcianti is working from her mother's bedside and may distract
23 defendant from assisting her attorney.

24 3. The interest of justice would be served by allowing defendant Marcianti to be
25 with her mother in the coming months.
26

4. The additional time requested by defendant is excludable in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161(h)(7)(A), considering the factors under Title 18 United States Code, Sections 3161(h)(7)(B)(i) and 3161(h)(7)(B)(iv).

CONCLUSIONS OF LAW

The ends of justice served by granting said continuance outweigh the best interest of the public and the defendant in a speedy trial, since the failure to grant said continuance would likely result in a miscarriage of justice, and would deny the parties herein sufficient time within which to inspect the discovery, taking into account the exercise of due diligence.

The continuance sought herein is excludable under the Speedy Trial Act, 18 United States Code § 3161(h)(7)(A), when considering the factors under 18 United States Code §§ 3161(h)(7)(B)(i), and 3161(h)(7)(B)(iv).

ORDER

IT IS HEREBY ORDERED that the trial set for March 11, 2013, at 9:00 a.m., is hereby vacated and continued to July 9, 2013 at the hour of 9:00, in Courtroom 7C. It is further ordered that the calendar call is continued from March 6, 2013, to July 8, 2013 at 9:30 a.m. in Courtroom 7C.

DATED this 11th day of March, 2013.


UNITED STATES DISTRICT JUDGE